

CITY OF NEWPORT  
RETIREMENT TRUST  
1993 RESTATEMENT

October 1, 1993

City of Newport  
City Hall  
810 SW Alder Street  
Newport, Oregon 97365

City

Vickie Spencer  
Ken Doerfler, Sr.  
Marvin Uhlenhake  
810 SW Alder Street  
Newport, Oregon 97365

Trustee

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Trustee

The City has adopted the City of Newport Employees' Retirement Plan (the plan) for the benefit of its employees and employees of adopting employers (Employers). The City restated the plan effective October 1, 1983 (the 1983 Restatement) and effective October 1, 1993 (the 1993 Restatement). The plan is for the exclusive benefit of eligible employees and is intended to qualify under Section 401(a) of the Internal Revenue Code. The plan is administered by a Retirement Board appointed by the City.

Prior to 1983, the plan had been funded through a group annuity contract issued by an insurance company. The City and Trustee established this trust effective January 1, 1983 to hold title to all assets of the plan, including insurance company contracts. The trust is intended to qualify as a tax exempt trust under Section 501(a) of the Internal Revenue Code.

The parties now restate the trust on the following terms:

## ARTICLE I

### Effective Date; Qualification

#### 1.01 Effective Date; Trust Year

1.01-1 This Restatement shall be effective October 1, 1993.

1.01-2 The trust year shall be a fiscal year ending June 30.

1.01-3 The last day of each trust year shall be the regular valuation date. Each other date on which the fund is valued at the request of the Retirement Board appointed under the plan (the Board) shall be a special valuation date.

#### 1.02 Qualification

1.02-1 The trust is maintained for the exclusive benefit of eligible employees and is intended to comply with section 501 and related provisions of the Internal Revenue Code and applicable regulations.

1.02-2 If the Commissioner of Internal Revenue rules that this trust as restated is not exempt under section 501 of the Internal Revenue Code, the City may retroactively amend it to satisfy the requirements for exemption.

## ARTICLE II

### Trust Fund

#### 2.01 Payments to Trustee

All rights under any insurance contracts used to fund the plan shall be assigned to the Trustee. Contributions under the plan shall be paid to the Trustee. The Trustee shall accept the sums paid and need not determine the required amount of contributions or collect any contribution not voluntarily paid.

#### 2.02 Pooling of Funds

The Trustee shall pool plan assets for investment in one or more pooled investment funds. The Trustee shall have no regard for the separate interests of individual participants and shall rely completely on the Board in paying benefits.

## ARTICLE III

### Investment and Administration

#### 3.01 Administration by Trustee

3.01-1 The Trustee shall have general responsibility for administering this trust, appointing investment managers and directing investments. The Board has responsibility for administering the plan.

3.01-2 The Trustee shall be given the names and specimen signatures of the Chair, secretary and members of the Board. The Trustee shall accept and rely upon the names and signatures until notified of change. Instructions to the Trustee shall be signed for the Board by the Chair or such other person as the Board may designate.

#### 3.02 Investment Standards

3.02-1 The trust assets shall be invested in securities and other property in accordance with applicable law. Permissible investments shall include but not be limited to the following:

(a) Preferred or common stock, notes, debentures, bonds or other securities.

(b) Mutual funds, money market funds, savings and loan accounts, commercial paper, certificates of deposit and savings accounts, including deposits bearing a reasonable rate or interest in the savings department of any bank that is a fiduciary of this trust or the plan.

(c) Real estate or mortgages.

3.02-2 The pooled fund may be held in cash to the extent considered advisable by the Trustee without liability for interest.

3.02-3 Any portion of the trust assets may be invested in any collective investment fund maintained by a trustee or an investment manager under 3.04 exclusively for the investment of assets held in qualified employee benefit trusts. The instrument creating such fund, as amended, is incorporated as part of this trust and shall control the administration of any assets invested in the fund. Assets of this trust may be commingled with assets of other qualified trusts in the fund.

### **3.03 Investment with Insurance Company**

**3.03-1** The Trustee may deposit all or part of the assets for investment with one or more insurance companies under a group annuity, deposit administration, guaranteed income or other annuity or investment contract. Any insurance company shall, subject to the contract, have exclusive responsibility for and control over all assets deposited with it. This section does not permit earmarked insurance on the lives of individual participants.

**3.03-2** If an insurance company holds assets in a separate pooled account, the following shall apply:

(a) The insurance company shall be an investment manager under 3.04.

(b) The insurance company shall invest the funds in accordance with 3.02, shall have all of the powers given to the Trustee under 3.07 and shall not be subject to any state laws limiting investments.

(c) The assets may be commingled with assets of other qualified plans in the pooled account for investment in accordance with the investment contract.

### **3.04 Investment Managers**

**3.04-1** The Trustee may appoint one or more investment managers, who may be an insurance company holding assets under 3.03, for all or part of the trust assets. Subject to 3.02, 3.04-2 and 3.04-4, any such manager shall have exclusive responsibility for and control over the investment of the assets for which responsibility is allocated to the manager by the Trustee.

**3.04-2** The Trustee may, as to any investment manager except an insurance company, reserve any or all of the following rights:

(a) To fix investment objectives and guidelines.

(b) To fix permissible investments.

(c) To require consultation by the investment manager at regular intervals or with respect to certain kinds of transactions.

(d) To receive notification of all transactions before or after consummation.



(e) To have proposed transactions submitted in advance and not consummated if disapproved by notice given within 15 days after submission.

**3.04-3** The investment manager shall act in a fiduciary capacity and the Trustee or Custodian, if one is employed under 3.05, shall act only as an administrative agent in carrying out directed investment transactions. The Trustee or Custodian shall have no duty to investigate any directed transaction and shall not be responsible for the investment decision. If a directed transaction violates the duty to diversify, to maintain liquidity or to meet any other investment standard under this trust or applicable law, the entire responsibility and liability, if any, shall rest upon the investment manager giving the direction.

**3.04-4** Each investment manager shall submit the following to the Trustee in writing:

(a) Verification that the manager is a registered investment advisor under the Investment Advisers Act of 1940, a bank as defined in that Act or a qualified insurance company.

(b) Verification that the manager is bonded for the protection of the trust in conformance with applicable law.

(c) Acknowledgment that the manager is a fiduciary with respect to this trust.

**3.04-5** The Trustee shall notify the Custodian, if one is employed under 3.06, of the appointment, removal or resignation of any investment manager. The Custodian may rely upon the continued authority of an appointed manager until notified of resignation or removal. Each investment manager shall, on request, give the Trustee and the Custodian the names and specimen signatures of persons authorized to act for the manager.

**3.04-6** The Trustee shall have authority to do the following even though assets are being managed by an investment manager:

(a) Dispose of fractional shares.

(b) Roll over Treasury obligations, commercial paper and similar investments.

(c) Make short-term investments in highly liquid, low-risk, interest-bearing deposits or securities.

**3.04-7** The investment manager shall be exclusively responsible for deciding whether to exercise any right relating to a security purchased at its direction. The Trustee or Custodian shall have no responsibility to exercise any such right unless instructed to do so within a reasonable time before the right expires.

### **3.05 Investment of Unallocated Assets**

The Trustee shall have responsibility for and control over the investment of assets not deposited with an insurance company or allocated to an investment manager. The Trustee shall act as an investment manager as to such assets and be subject to 3.04.

### **3.06 Custodian**

The Trustee may employ one or more banks or other suitable institutions to serve as Custodian for all or part of the trust assets. A Custodian shall have exclusive responsibility for the custody of all assets entrusted to it and for carrying out the investment directions of the investment manager or the Trustee. No Custodian shall have any trustee powers or responsibilities. The provisions of 3.04-3 shall apply to any investment directions from the investment manager or the Trustee to a Custodian.

### **3.07 Powers of Trustee**

**3.07-1** The Trustee shall have all necessary powers to discharge its duties under this trust, including without limitation the powers to do the following, subject to authority allocated to an insurance company or an investment manager:

- (a) Own and hold all assets and retain and exercise all incidents of such ownership, subject to the terms of this trust, either directly or through nominees, with or without disclosing the trust.
- (b) Deal in any way with any assets through a public or private transaction and receive all proceeds from the assets.
- (c) As the holder of any security in the trust fund, exercise any right or power or take any action that could be exercised or taken by a beneficial owner holding the security of record.
- (d) Write covered call options on securities in the fund and deal in other options directly related to an outstanding covered call option.

**3.07-2** The Trustee's reasonable cost in any litigation relating to the trust assets shall be an administrative expense. The Trustee may decline to start or respond to any legal action unless the City or another Employer furnishes satisfactory indemnification from any reasonable expense not covered by the trust fund. The Trustee may compromise claims on terms approved by the City, which shall be binding on all parties.

**3.07-3** The Trustee may borrow money for trust purposes on the security of trust assets.

### **3.08 Distributions; Conflicting Claims**

**3.08-1** The Trustee may pay a participant, contingent annuitant or beneficiary's benefits directly to the participant, contingent annuitant or beneficiary or to one or more of the following as directed by the Board or chosen by the Trustee in the absence of direction:

(a) A spouse or parent or to a child of legal age.

(b) A legal guardian or a person or entity having actual custody of the person.

(c) A provider of maintenance, support or hospitalization.

**3.08-2** A receipt from the recipient or canceled check shall be a sufficient voucher for the Trustee. No accounting for the payment need be obtained by Employer, the Trustee or the Board.

**3.08-3** If a dispute arises over a distribution, the Trustee may withhold payment until a court of competent jurisdiction has ruled on the dispute or it is settled by the parties concerned.

### **3.09 Expenses and Fees**

**3.09-1** The Trustee shall be reimbursed for all expenses approved by the Board. Any separate trustee that is not employed by the City or an affiliate may be paid a reasonable fee approved from time to time by the Board. The Trustee shall notify the Board and the City periodically of expenses and fees.

**3.09-2** The City may elect to pay any administrative fees or expenses and may allocate the cost among the Employers. Otherwise the expenses and fees shall be paid from the trust fund.

### **3.10 Manner of Acting**

**3.10-1** If there are individual trustees, the Trustee shall act by majority decision of the separate trustees evidenced by a writing signed by the majority with or without a meeting. No action shall be taken without notice to all trustees unless a trustee is reasonably considered unavailable. If one or more of the trustee positions is vacant, those remaining shall have full powers to act though less than a majority. Any trustee may sign on behalf of the other trustees to carry out the Trustee's functions unless the trustees decide otherwise.

**3.10-2** The Trustee may delegate all or part of its administrative duties to one or more agents, including the Board, or may retain advisors for assistance. The Trustee may consult and rely upon the advice of counsel, who may be counsel for an Employer.

## **ARTICLE IV**

### **Records; Valuation; Accountings**

#### **4.01 Records; Information for Retirement Board**

**4.01-1** The Trustee shall keep complete records of the trust open to inspection by the City and the Board at all reasonable times. The form and content of the records shall be sufficient for the Board to comply with reporting and disclosure requirements under applicable law.

**4.01-2** In addition to reports required below, the Trustee shall furnish to the Board any information about the trust fund that it requests.

#### **4.02 Valuation**

**4.02-1** As of each regular or special valuation date, the Trustee shall value the trust fund in accordance with applicable law and report the value to the Board.

**4.02-2** The Board may call for a special valuation whenever it finds it desirable to avoid a material distortion or otherwise to administer the plan properly.

#### **4.03 Accountings**

**4.03-1** The Trustee shall furnish the City with a complete statement of account within 60 days after the end of each trust year showing assets and liabilities, and income and expenses for the year.

**4.03-2** The City may object to an accounting within 60 days after it is furnished and require that it be settled by audit by a qualified independent certified public accountant. The auditor shall be chosen by the Trustee from a list of at least five such accountants furnished by the City at the time the audit is requested. Either the City or the Trustee may require that the account be settled by a court of competent jurisdiction in lieu of or in conjunction with the audit. The cost of any audit or court proceedings shall be paid from the trust fund as an administrative expense.

**4.03-3** If no objections to an accounting are filed within the time provided, the account shall be settled for the period covered by it.

**4.03-4** When an account is settled, it shall be final and binding on all parties including all participants and persons claiming through them.

## **ARTICLE V**

### **Protection of Fiduciaries**

#### **5.01 Indemnity**

**5.01-1** Subject to 5.01-2, all Employers, jointly and severally, shall indemnify and defend any fiduciary who is an officer, director, or employee of the City or an affiliate under plan section 2.01-2 from any claim or liability that arises from any action or inaction in connection with the plan.

**5.01-2** The following rules shall apply to indemnification under 5.01-1:

(a) Coverage shall be limited to actions taken in good faith that the fiduciary reasonably believed were not opposed to the best interest of the plan.

(b) Negligence by the fiduciary shall be covered to the fullest extent permitted by law.

(c) Coverage shall be reduced to the extent of any insurance coverage.

**5.01-3** The City shall indemnify and defend any plan fiduciary not covered by 5.01-1 from any claim or liability arising from any action or inaction based on information or direction from the Board or an Employer absent willful misconduct, gross negligence or bad faith.

## **5.02 Bonding**

The Trustee and other plan fiduciaries shall be bonded to the extent required by applicable law for the protection of the trust. The cost shall be an administrative expense covered by 3.09.

# **ARTICLE VI**

## **Trustees**

### **6.01 Appointment; Number**

**6.01-1** The Trustee initially consists of the persons named in this trust agreement.

**6.01-2** The City may enlarge or reduce the number of separate trustees at any time by appointment or removal under this Article.

### **6.02 Resignation and Removal**

**6.02-1** Any individual trustee may resign at any time by notice to the City, which shall be effective in 60 days unless the City and the resigning trustee agree otherwise.

**6.02-2** The Trustee, including any individual trustee, may be removed by the City upon 60 days' notice or shorter notice accepted by the removed trustee.

**6.02-3** When resignation or removal is effective, the Trustee shall begin transfer of assets to the successor Trustee or the remaining individual trustees immediately. The transfer shall be completed within 60 days, unless the City extends the time limit.

**6.02-4** If the Trustee, including any individual trustee, resigns or is removed, the City shall appoint a successor or an alternative funding medium shall be established by the effective date of resignation or removal under 6.02-1 or 6.02-2. If neither has occurred, the Trustee may apply to a court of competent jurisdiction for appointment of a successor or for instructions. All expenses of the Trustee in connection with the proceedings shall be allowed as administrative expenses of the trust.

### **6.03 Appointment of Successor**

**6.03-1** The City may appoint an individual or any national or state bank or trust company as a general additional trustee or as a successor to replace the Trustee, including any individual trustee, upon death, resignation or removal. The appointment shall be effective when accepted in writing by the new trustee who shall share with any

remaining individual trustees all the rights and powers of the Trustee including ownership of the trust assets. Any former trustee shall execute any instrument necessary or reasonably requested by the City, the Board, any remaining trustee or the new trustee to evidence the transfer.

**6.03-2** A new trustee need not examine the records and acts of any prior trustee and may retain or dispose of existing trust assets. A new trustee shall not be responsible for, and the City shall indemnify and defend the new trustee from, any claim or liability because of any action or inaction of any prior trustee or any other past event, any existing condition or any existing assets.

#### **6.04 Accountings; Continuity**

**6.04-1** If the Trustee, including any individual trustee or any special additional trustee under 6.05, resigns, dies or is removed, any remaining trustee or the City may call for an accounting and shall do so if requested by the Board, or the resigning or removed trustee, or the representative of a deceased trustee. The accounting shall be received and settled as provided in 4.03 for regular accountings.

**6.04-2** No resignation, death or removal of the Trustee or of any or all individual trustees, nor any change in identity of the Trustee for any reason, shall terminate the plan or this trust.

#### **6.05 Special Additional Trustee**

**6.05-1** The City may appoint one or more national or state banks or trust companies as special additional trustees. A special additional trustee shall be included in the term Trustee for purposes of asset management powers but not for purposes of signing amendments.

**6.05-2** The City shall specify the responsibilities of a special additional trustee, which may be general or limited. A special additional trustee shall have no powers, responsibility or liability for anything outside of its specified responsibilities and shall not be liable for any action or inaction of any other trustee with respect to other matters.

**6.05-3** The City's statement of appointment of a special additional trustee shall become part of this trust.

## ARTICLE VII

### Amendment and Termination

#### 7.01 Amendment

7.01-1 The City may amend this trust agreement at any time by written instrument executed and delivered to the Trustee, with the following limitations:

(a) All amendments shall be signed by the Trustee.

(b) No amendment shall reconstitute any of the trust fund in any Employer or otherwise modify the trust so that it would not be for the exclusive benefit of eligible employees except as required or permitted by applicable law and regulations.

7.01-2 Amendments may be made effective retroactively to the extent permitted by applicable law and regulations.

#### 7.02 Termination

7.02-1 The City may terminate this trust at any time and fund the plan entirely through a group annuity insurance contract under 3.03 of this trust agreement. Any group annuity contract held by the trust at the time of termination shall be assigned to the City.

7.02-2 The City may terminate the plan at any time. In such event, the City may request a ruling from the Internal Revenue Service on the effect of termination on the qualification of the plan and this trust. The Trustee may decline to distribute under 7.02-3 or 7.02-4 until an appropriate ruling has been issued.

7.02-3 Upon termination of the plan, the City may continue the trust to pay benefits as they mature or liquidate and distribute the applicable portion of the trust fund. If the trust fund is liquidated, it shall be allocated as directed by the Board among participants and beneficiaries in accordance with the plan.

7.02-4 In no event shall any part of the contributions or the principal or income of this trust be paid to or reconstituted in an Employer or be used other than for the exclusive benefit of the participants and their beneficiaries, except for recovery of an actuarial surplus as provided in the plan.



## ARTICLE VIII

### General Provisions

#### 8.01 Applicable Law

This trust agreement shall be construed according to the laws of Oregon except as preempted by federal law.

#### 8.02 Agreement Binding on All Parties

This agreement shall be binding upon the heirs, personal representatives, successors and assigns of any and all present and future parties.

#### 8.03 Notices and Directions

Except as otherwise required or permitted under the plan or this trust agreement or applicable law, any notice or direction under this trust agreement shall be in writing and shall be effective when actually delivered or when deposited postpaid as first-class mail. Mail shall be directed to the address stated in this trust agreement or in a statement of adoption or to such other address as a party may specify by notice to the other parties.

#### 8.04 No Implied Duties

The duties of the Trustee shall be those stated in this trust, and no other duties shall be implied.

#### 8.05 Information from Employer or Board

The Trustee may accept as correct and rely on any information furnished by Employer or the Board. The Trustee may not require an audit or disclosure of the records of an Employer or the Board.

#### 8.06 City Functions

**8.06-1** Except as provided in 8.06-2, all functions or responsibilities of the City shall be exercised by the City Manager, who may delegate all or any part of those functions.

**8.06-2** The power to amend or terminate the trust may be exercised only as follows:

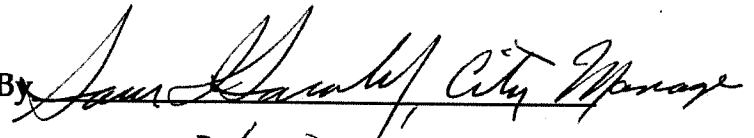
- (a) The City Council shall have general power to amend or terminate the trust.

(b) The City Manager may amend the trust without Council action to conform the trust with applicable law, to clarify the trust terms or to change administrative procedures.


8.06-3 Members of the City Council shall have no administrative or investment authority or function. Membership on the Council shall not, by itself, make a person a plan fiduciary.

City

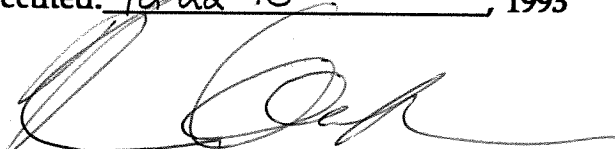
CITY OF NEWPORT

By   
Executed: 12/10, 1993

Trustee

  
Vickie Spencer

Executed: 12-22-93, 1993

  
Ken Doerfler, Sr.

Executed: 12-23, 1993

  
Marvin Uhlenhake

Executed: 12/27, 1993

AMENDMENT NO. 1  
TO  
CITY OF NEWPORT  
EMPLOYEES' RETIREMENT PLAN  
1993 RESTATEMENT

City of Newport  
City Hall  
810 SW Alder Street  
Newport, Oregon 97365

City

The Plan, as most recently amended by the 1993 Restatement, is further amend as follows, with deleted language shown lined out and new language shown double underlined:

1. **Mandatory Contributions**

In order to document the City's compliance with an amendment to Article IX of the Oregon Constitution made by Measure 8 in 1994, which was later struck down by the Oregon Supreme Court, the 1993 Restatement of the Plan is amended as shown below.

\* \* \*

4.01 **Compensation**

4.01-1 "Compensation" means the following subject to the limits in  
4.01-2:

\* \* \*

(b) For allocation of the Money Purchase contributions under 4.02-1, allocation of Mandatory contributions under 4.02-2, the limit on voluntary contributions under 4.06-1, the CP test under 4.06-4 and the determination of Average Monthly Earnings under 5.02-3, compensation means the amount under (a), adjusted as follows:

\* \* \*

4.02 **Money Purchase Contributions; Mandatory Contributions**

4.02-1 Subject to 4.03, for each plan year Employer shall make a Money Purchase contribution of 6 percent of compensation as a Qualified Employee for such year for each participant.

**4.02-2** Subject to 4.03, for the period beginning December 8, 1994 and ending May 27, 1996 a Mandatory contribution of 6 percent of compensation as a Qualified Employee shall be made for each participant. Mandatory contributions shall be made by Employer as a pick-up under Section 414(h) of the Internal Revenue Code of contributions required by Section 10(1) of Article IX of the Oregon Constitution before such Section was struck down by the Oregon Supreme Court.

**4.02-23** "Compensation" shall be as defined in 4.01-1(b). For a new participant, the contribution shall be based on compensation for the partial plan year after participation starts.

#### **4.03 Limit on Annual Additions**

\* \* \*

**4.03-3** "Annual addition" means for any limitation year the sum of Money Purchase contributions, Mandatory contributions, and voluntary contributions for the year. In applying the limitations on annual additions, all employers that are statutory affiliates as described under 2.01-2, with the adjustment provided in section 415(h) of the Internal Revenue Code, shall be considered a single employer.

\* \* \*

#### **4.04 Adjustments to Satisfy Limits**

**4.04-1** If an annual addition for a participant would exceed the limit in 4.03, contributions shall be reduced pursuant to Treasury Regulation section 1.415-1(d) as necessary to eliminate the excess, in the following order:

- (a) Voluntary contributions.
- (b) Money Purchase contributions.
- (c) Mandatory contributions.

**4.04-2** If an annual addition for a participant would exceed the limit in 4.03 because of the defined benefit portion of the basic benefit in 5.02-1(a) or because of any other tax qualified retirement plan of an Employer, the contributions and benefits under the plans shall be reduced as necessary to meet the limit, in the following order:

\* \* \*

(e) Mandatory contributions under this plan.

#### 4.05 Time of Payment

Employer shall make payments to the Trustee to cover all contributions as follows:

\* \* \*

(b) Employer may pay Money Purchase contributions and Mandatory contributions in one sum or in installments.

\* \* \*

#### 4.08 Participants' Accounts

4.08-1 The Board shall keep separate accounts for the following contributions, and such additional separate accounts for each participant as may be necessary to administer the plan properly:

\* \* \*

(d) Mandatory contributions.

(~~de~~) Voluntary contributions.

\* \* \*

#### 5.02 Normal Retirement Basic Benefit

5.02-1 Subject to 5.02-2, 5.05 and 5.08-6, the basic benefit on normal retirement is a monthly pension for life equal to the sum of the following:

\* \* \*

(c) An annuity equal in value to the balance of the participant's Mandatory contribution account, if not withdrawn under 7.02-2.

(~~ed~~) An annuity equal in value to the balance of the participant's voluntary contribution account, if not withdrawn under 4.07 or 7.02-2.

\* \* \*

## **6.01 Preretirement Death Benefits**

**6.01-1** On death of a participant before starting benefits the participant's beneficiary under 6.01-3 shall receive in a lump sum the total of the following:

\* \* \*

(b) The balance of the participant's Mandatory contribution account.

(~~bc~~) The balance of the participant's voluntary contribution account.

(ed) An amount attributable to the participant's defined benefit as determined under 6.01-2.

\* \* \*

## **6.02 Disability Retirement Benefits**

**6.02-1** A participant whose employment terminates due to disability shall be paid in a lump sum the total of the following:

\* \* \*

(b) The balance of the participant's Mandatory contribution account.

(~~bc~~) The balance of the participant's voluntary contribution account.

(ed) An amount attributable to the participant's defined benefit as determined under 6.02-2.

\* \* \*

## **7.01 Accrued Benefits; Vesting**

\* \* \*

**7.01-2** A Participant's accrued benefit on termination shall be the sum of:

(a) The participant's Money Purchase contribution accounts, Mandatory contribution account and voluntary contribution accounts.

\* \* \*

**7.01-3** For a participant hired before October 1, 1993, the Money Purchase accounts and the voluntary contribution account shall be fully vested at all times.

~~**7.01-4**~~ For a participant hired after September 30, 1993, the voluntary contribution account shall be fully vested at all times and the Money Purchase account shall vest in accordance with the schedule in 7.01-5(b). For all participants the Mandatory contribution account shall be fully vested at all times.

~~**7.01-5**~~ A participant's defined benefit accrued under 5.02-1(a) shall be vested as follows:

\* \* \*

## **7.02 Payment**

**7.02-1** A participant may elect within 60 days after termination to withdraw the vested portion of the Money Purchase contribution accounts and all of the Mandatory contribution accounts and voluntary contribution accounts. If the election is made, the vested portion of the accounts shall be paid to the participant in a lump sum and the participant's defined benefit and any unvested Money Purchase account shall be forfeited under 7.03. The Retirement Board may delay payment of the accounts for a valuation of the fund.

**7.02-2** A participant may elect at any time after termination to withdraw either or both of the participant's voluntary contribution account and Mandatory contribution account. Such a withdrawal shall have no effect on the participant's defined benefit and Money Purchase account.

**7.02-23** A terminated participant who does not elect a to withdraw all amounts available under 7.02-1 and 7.02-2 shall normally start receiving vested accrued benefits at normal retirement age. A participant with 10 or more Years of Service may elect to start receiving, on the first day of any month after age 55, the accrued benefit adjusted under 5.03-1. If a terminated participant dies before benefits are to start, benefits shall be limited to those payable under 6.01.

**7.02-34** A vested terminated participant entitled to benefits must apply for benefits under 5.06 and elect a distribution option between 30 and 90 days before benefits are to start subject to 5.06-3. If an application is not filed by the Benefit Starting Date for normal retirement, 5.07-2 shall apply. The form of benefit shall be determined under 5.08.

\* \* \*

### **10.03 Allocation of Assets on Termination**

**10.03-1** That portion of the plan assets attributable to voluntary contribution accounts, Mandatory contribution accounts and Money Purchase contribution accounts shall be allocated in proportion to account balances.

\* \* \*

## **2. Compliance with '96 Act**

In order to comply with provisions in the '96 Act with respect to family aggregation rules, the following sections are amended as shown below:

### **4.01 Compensation**

**4.01-2** Compensation counted under 4.01-1(b) for any participant for a year shall be limited to as follows:

~~(a) The limit for any participant for a year shall be \$150,000 plus any adjustment authorized by applicable law, except as follows: The limit for anyone who first becomes a participant in the plan before July 1, 1996 shall be \$235,840.~~

~~(b) Compensation of a highly compensated employee who is one of the 10 highest paid employees shall be aggregated with compensation from Employer to the spouse or a lineal descendant under age 19 to determine the limit.~~

~~(c) If the limit is exceeded because of aggregation under (b) above, pay counted for each aggregated employee shall be reduced pro rata to stay within the limit.~~

~~**4.01-3** "Highly compensated employee" is defined in section 414(q) of the Internal Revenue Code and related Treasury regulations. In determining which employees are highly compensated employees, the following shall apply:~~



~~(a) Subject to (b) through (d) below, a highly compensated employee for a plan year is an employee who has performed services for Employer during the year or the prior plan year and is one of the following:~~

~~(1) A person paid over \$75,000 for either year.~~

~~(2) A person paid over \$50,000 for either year who is among the highest paid 20 percent of employees Employer for either year, aggregating employees of all statutory affiliates under 2.01-2 and excluding employees to the extent provided by applicable regulations.~~

~~(4) An officer of Employer paid over \$45,000 for either year, or the highest paid officer if no officer is paid over \$45,000 for a year. The number of officers counted in any year under this provision shall not exceed either 50 or the greater of 3 or 10 percent of the employees of Employer.~~

~~(5) A family member in either year of a highly compensated employee who is a 5 percent owner or is one of the 10 highest paid employees for the year. For this purpose, family members include the spouse, lineal ancestors, lineal descendants, and spouses of lineal ancestors and descendants.~~

~~(b) The dollar amounts in (a) above shall be adjusted in accordance with Treasury regulations for changes in cost of living.~~

~~(c) Former employees shall be taken into account in accordance with applicable regulations.~~

~~(d) Pay for this purpose shall mean compensation under 4.01-1(a), adjusted to include any amounts set aside under a deferred compensation plan under section 457 of the Internal Revenue Code.~~

\* \* \*

#### 4.06 Voluntary Contributions

**4.06-1** Subject to 4.03 and 4.06-5, Qualified Employees may make voluntary contributions to the plan each year. The amount shall be a whole number percentage of compensation for the year as defined in 4.01-1(b). The maximum shall be 10 percent. The Board may fix lower maximums for participants who are highly compensated employees under Section 414(q) of the Internal Revenue Code to satisfy the requirements of 4.06-5.

\* \* \*

#### 5.10 Benefit Limits for Restricted Employees

**5.10-1** Payments to restricted employees shall be limited as follows:

\* \* \*

(d) "Restricted employee" means one of the highest-paid 25 of the current and former highly compensated employees, as defined in Section 414 of the Internal Revenue Code, with benefits under the plan.

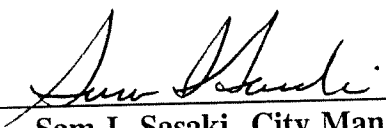
#### 3. Effective Dates

**3.1** The changes made by section 1 of this amendment shall be effective December 8, 1994.

**3.2** The changes made by section 2 of this amendment shall be effective July 1, 1997.

City

CITY OF NEWPORT

By:   
Sam I. Sasaki, City Manager

Executed: July 28, 1997